

Chapter 11

Federal Consistency and the National Interest

Overview

Illinois has strong and cooperative working relationships with federal agencies in seeking collaboration and input in addressing both state and federal coastal projects and concerns. Many coastal projects require state and federal permits or some form of authorization. The ICMP has been developed with participation by federal agencies affected by the coastal program to allow full consideration of the national interests. In December of 2009, Illinois participated in a CZMA Federal Consistency Workshop held by NOAA. Illinois solicited statements from the head of each of these federal agencies as to the national interest in planning for and managing the coastal zone, including the siting of facilities such as energy facilities which are of greater than local significance.

Input from federal agencies on the national interests within our coastal zone provided the opportunity for their proper consideration in developing the ICMP. The national interests within our coastal zone are also in the interests of the state. Knowing the specific national issues and information regarding federal activities and projects within our coastal zone helped to develop an effective process in meeting the objectives and requirements for federal consistency. This chapter includes these interdependent requirements: the identification of the national interests and the development of a process for assuring federal consistency. These requirements enhance state-federal coordination and the level of communication necessary to ensure that both the state and federal interests are met in the management and protection of our coastal area.

Federal-State Consultation Requirements

The state must evaluate federal comments received during the program development process. States must consider and evaluate relevant federal agency views or comments about the following and, where appropriate in the opinion of the state, accommodate the substance of pertinent comments in the management program:

- Management of coastal resources for preservation, conservation, development, enhancement or restoration purposes;
- Statements of the national interest in the planning for or siting of facilities which are more than local in nature;
- Uses which are subject to the management program;
- Areas which are of particular concern to the management program;
- Boundary determinations;
- Shorefront access and protecting planning, energy facility planning and erosion planning processes; and
- Federally developed or assisted plans that must be coordinated with the management program pursuant to subsection 306(d)(3) of the CZMA.

In order to provide an opportunity for participation by relevant federal agencies and consider their views, in March of 2010 Illinois contacted each “relevant” federal agency listed in Sec. 923.2(d) and other federal agencies the state determined to be relevant in identifying potential federal actions that have an impact on our coastal lands and waters.

Identifying the National Interests

Federal agencies administer many federal laws and programs within the ICMP coastal boundary, such as dredging of navigation channels and harbors, the protection of federally endangered species, and the cleanup of certain contaminated sites. Federal agencies own land, such as military bases, national forests, and national monuments, and conduct many projects and activities within our coastal area. They also provide financial assistance for projects including our transportation systems.

In developing the CZMA, Congress recognized the distinct and irreplaceable nature of the nation's coast and its value to the present and future well being of the nation. The primary focus for the consideration of the national interest under this program is to provide for protection of facilities and due consideration of activities which are in the national interest. Consideration of the national interests is a benefit to the states and the local communities because these requirements establish a reciprocal state-federal relationship. Federal agencies have the opportunity to give full consideration of their interests in the development of the ICMP in ensuring comprehensive coastal management purposes. Identifying the specific national interests within the ICMP boundary will assist in the identification of the federal activities that are subject to federal consistency.

The following is a general list of issues and federal activities that the state considers to be in the national interest within our coastal boundary. A federal activity involving one or more of these areas may have an effect on a coastal use or resource and will require a consistency determination:

- Water transportation, ports and other navigation facilities
- Highway transportation
- National defense
- Energy production and transmission
- Public recreation areas
- Threatened and endangered species
- Historical, cultural, and archeological sites
- Wetlands and significant habitat areas
- Activities conducted under CERCLA (Superfund)
- Hazardous Waste Management (RCRA)
- Invasive species
- Homeland Security

The following is a list of specific sites or issues currently known to be in the national interest:

(Listing to follow federal agency input)

Federal Consistency Regulations

Developing federal consistency procedures is a requirement for inclusion in the ICMP. The minimum requirements for inclusion in the ICMP submission are provided at 15 CFR 923.53. These include providing a list of federal license and permit activities that will be subject to consistency and identifying the public notice procedures to be used for certifications submitted for these activities. The substantive federal regulations governing federal consistency for states with approved coastal management programs are provided at 15 CFR Part 930. These regulations cover many of the processes, procedures and variable situations that need to be followed by state and federal agencies, and applicants requiring a federal license or permit, or applicants seeking federal assistance through grant or contractual arrangements. This chapter provides summaries or portions of the federal regulations for which the ICMP must fully comply. More information, including guidance documents and the federal consistency regulations, can be found under the “federal consistency” link at <http://coastalmanagement.noaa.gov>.

General Federal Consistency Requirements and Objectives

The “Federal Consistency” provision of the CZMA gives states with federally approved coastal management programs the responsibility for reviewing federal agency actions and activities to ensure that they are consistent with the state program’s management authorities and policies. As such, federal consistency promotes state discretion in determining whether a federal action will be in keeping with the goals, policies and coastal stewardship efforts identified in the state’s coastal program document.

Overall objectives for Part 930 are cited under Section 930.1. One central objective is to implement the federal consistency requirement in a manner that strikes a balance between the need to ensure consistency for federal actions affecting any coastal use or resource with the enforceable policies of approved management programs and the importance of federal activities. Another central objective is to provide flexible procedures that foster intergovernmental cooperation and minimize duplicative effort and unnecessary delay, while making certain that the objectives of the CZMA are met. As further stated, “Federal agencies, State agencies, and applicants should coordinate as early as possible in developing a proposed federal action, and may mutually agree to intergovernmental coordination efforts to meet the requirements of these regulations, provided that public participation requirements are met and applicable State management program enforceable policies are considered.”

These objectives highlight the importance of seeking federal input on the specific areas of national interest, and on the types of federal programs, licenses and permits, and federal assistance programs, which are subject to federal consistency in achieving the mutual federal-state objectives in the ICMP.

Illinois’ proposed management technique is based on existing statutes, regulations, and authorities, which provide for the comprehensive management of activities affecting our coastal waters and resources. Thus, federal consistency in the ICMP requires that federal actions must be consistent with state laws and policies to the “maximum extent practicable” as defined later in this chapter.

Illinois state agencies work closely with federal agencies in coastal development projects and in issuing permits. Our coastal land area is 110 square miles, which is relatively small in comparison to many other states. Our lakeward boundary area is 1,564 square miles. It extends lakeward for about 40 miles at our north end, to about 17.5 miles near the south end. Our coastal boundary is mostly developed and highly urbanized and for the most part within municipal boundaries. Land and water use actions within our coastal zone are subject to numerous state and local controls. Permits and decisions regarding most coastal actions that could reasonably have a coastal effect, whether federal, state or local, are generally subject to public notice and given the opportunity for public comment and input. 3 February 2010

The importance of the Great Lakes connection via Illinois waterways to the Mississippi River is highly significant for addressing many national and state interests such as invasive species, water quality, water diversions, navigation and commerce. Cleanup of harbors, navigation interests, homeland security, and the goal for energy independence are other common federal and state interests.

Illinois state agencies and federal agencies are working on many projects of common state and national interest. Federal consistency provides a mechanism through which applicants become aware of all state authorizations required for a proposed activity. The process encourages early coordination, review and comment on federal actions that may have an effect on our coastal area. It provides an opportunity for state and federal agencies to improve existing coordination efforts and may provide a unique role for improving coordination with regional and local governments.

Federal Actions subject to Federal Consistency

The following federal actions are subject to federal consistency:

Federal Agency Activities - means any functions performed by or on behalf of a federal agency in the exercise of its statutory responsibilities. The term “Federal agency activity” includes a range of activities where a federal agency makes a proposal for action initiating an activity or series of activities when coastal effects are reasonably foreseeable. The term federal “development project” means a federal agency activity involving the planning, construction, modification, or removal of public works, facilities... and includes the acquisition, use, or disposal of any coastal use or resource (See Section 930.31 for full definition).

Federal License or Permits - means any required authorization, certification, approval, lease, or other form of permission which any Federal agency is empowered to issue to an applicant (See Section 930.51 for full definition). “Applicant” means any individual, public or private corporation.

Federal Assistance means assistance provided under a federal program to an applicant agency through grant or contractual arrangements, loans, subsidies, guarantees, insurance, or other form of financial aid (Section 930.91). “Applicant agency” means any unit of state or local government, or any related public entity such as a special purpose district, which submits an application for federal assistance.

The federal consistency requirements and procedures regarding each of the three above actions are different and are discussed separately as follows:

Federal Agency Activities

A consistency determination by the state must be made before a federal action can proceed. The federal agency conducting the activity is responsible for determining if the proposed activity or development project will affect any coastal use or resource.

For federal agency activities, if the federal agency finds that a proposed activity will affect the coastal zone, then the federal agency must prepare and submit a "consistency determination" to the ICMP at least 90 days before final approval of the activity. A consistency determination for a federal agency activity affecting Illinois' coastal zone is an assertion by a federal agency that the activity will be conducted consistent with state laws to the maximum extent practicable. The words "maximum extent practicable" mean fully consistent with the enforceable policies cited in the ICMP, unless compliance is prohibited by existing law applicable to the federal agency's operations. A consistency certification must state that the proposed activity complies with, and will be conducted in a manner, consistent with Illinois' state regulations and policies.

Illinois has identified a “List of Federal Activities and Development Projects” (provided at the end of this chapter) where a federal action is likely to affect a coastal resource and is subject to a federal consistency determination. If the federal agency determines that an activity on the “List of Federal Activities and Development Projects” or other situation as cited in Section 930.35 will not have coastal effects, then the federal agency shall provide the ICMP with a negative determination. The negative determination shall be submitted at least 90 days prior to final approval of the activity. It shall contain a brief activity description, its location, and the basis set for the negative determination. If the federal agency determines that an agency activity has no effects on any coastal use or resource, and a negative determination is not required, then the federal agency is not required to coordinate a federal consistency review.

The ICMP will provide for public participation in the ICMP review of consistency determinations. The ICMP will encourage joint public notices with federal agencies to minimize duplication of efforts. For public notices that are not provided by the federal agency or a state agency reviewing the action, the

ICMP will provide public notice in a local newspaper serving the coastal area most likely to be affected by the federal activity. The public notice shall summarize the activity and announce the availability for public inspection of the consistency determination and accompanying data. The ICMP will list federal activities and development projects submitted by a federal agency for consistency review on the ICMP website. The website will contain a brief description of the activity and a source for additional information. A public comment period will be provided sufficient to give the public an opportunity to provide comments to the ICMP in a timely fashion.

If the ICMP does not respond to a consistency determination or a negative determination within 60 days from ICMP receipt of the federal agency, then ICMP concurrence shall be presumed. State agency objection and mediation procedures are outlined in Sections 930.43 through 930.45.

Federal agencies are encouraged to review their activities (other than development projects), to identify *de minimis* activities which can be considered by the ICMP as exclusions from consistency determinations. State and federal agencies may also agree to exclude **environmentally beneficial** federal agency activities from review. General consistency determinations, phased consistency determinations, and national or regional consistency determinations are also available to facilitate federal-state coordination. These could include **repeated or routine activities**. These coordination measures along with the use of existing procedures will be used by the ICMP in order to reduce waste, duplication of effort, and to reduce federal and state agency administrative burdens.

Federal Licenses or Permits

A consistency determination by Illinois must be made before a federal action can proceed. For projects within the coastal boundary requiring a federal permit or license, the applicant must provide the federal agency with a consistency certification in the following form: "The proposed activity complies with the enforceable policies of the ICMP and will be conducted in a manner consistent with such program." An applicant for a federal license or permit activity that affects the coastal zone must also furnish the ICMP a copy of such certification and data and information necessary to demonstrate consistency. Concurrence shall be conclusively presumed if the ICMP's response is not received within six months from the ICMP's receipt of the consistency determination.

Illinois has identified a "List of Federal Licenses and Permit Activities" (provided at the end of this chapter) which the state believes could affect a coastal use or resource and wishes to review for federal consistency. Federal license and permit activities not listed at the end of this chapter will be monitored with the assistance of and consultation with state and local agencies.

In Illinois, there are several coordination mechanisms between state and federal agencies that jointly seek input and review of actions. For example, construction projects in Illinois waterways, floodplains and wetlands often require both state and federal authorization. In order to simplify the approval process for the applicant seeking project authorizations from the USACE, the IDNR Office of Water Resources, and the IEPA, a joint application process was established. The "joint application form" allows for a coordinated review of identical information, as provided in the application, in seeking authorizations pursuant to Sections 401 and 404 of the Clean Water Act and the Rivers, Lakes and Streams Act (615 ILCS 5). This process also allows for consultation under the provisions of the Fish and Wildlife Coordination Act (16 USC 661-664), which gave the IDNR the permit review responsibilities relative to Corps of Engineers permit applications. It further provides for the IDNR Office of Realty and Environmental Planning review authority under the Interagency Wetland Policy Act of 1989 and the Illinois Endangered Species Protection Act, which is applicable for actions made by state agencies and local governments.

The issuance of relevant state permits can constitute ICMP consistency concurrence, if the state permitting agency provides the ICMP with assurances that all applicable ICMP policies and public participation requirements are met. The ICMP will develop a list of conditions allowing concurrence of certain minor activities in order to avoid repeated review of inconsequential activities.

The ICMP will rely upon the public notice provided by the federal agency reviewing the application for the federal license or permit if such notice satisfies the minimum requirements set forth in paragraphs (a) and (b) of Section 930.61. If public notice cannot be satisfied in this manner, then public notice will be provided for as stated under “Federal Agency Activities.”

Federal Assistance to State and Local Governments

For federal financial assistance programs to state agencies or local governments, the applicant agency shall submit an application to the ICMP for consistency review, for any proposed federal assistance activity that will have a reasonable foreseeable effect on any coastal use or resource. The applicant agency shall evaluate the relationship of the federal assistance program and any reasonably foreseeable coastal effects and the policies in the ICMP. The state has not identified any federal assistance programs, which the state believes could affect a coastal use or resource and wishes to review for federal consistency. If the applicant agency determines that the federal assistance program can result in a coastal effect, then the applicant agency shall submit an application to the ICMP for consistency review.

ICMP Federal Consistency Review Procedures

The ICMP section will serve as the point of contact for federal agencies and the public to discuss consistency reviews. All applications, negative determinations, and requests for federal consistency reviews shall be submitted to the ICMP section. The ICMP section will be the sole responsible entity for making final determinations for federal consistency and for providing any written determinations to federal agencies and applicants.

- The IDNR will be the lead state agency for coordinating the review of federal actions to determine consistency of proposed actions with the ICMP. The IDNR will also be responsible for securing necessary review and comment from other state, regional, or local government agencies, and, where applicable, the public. (See Section 930.6 requirement)
- The IDNR Office of Realty and Environmental Planning, Division of Natural Resource Review and Coordination, serves as the primary point of contact on establishing an official IDNR environmental position on internal and external projects, permits, and plans related to construction, development or other activities that would result in a change in existing environmental conditions. The Division carries out the state role, as mandated by the federal Fish and Wildlife Coordination Act, National Environmental Policy Act, or other federal statutes or joint agency agreements, by reviewing projects, permits, environmental impact statements, and plans proposed by the U.S. Army Corps of Engineers, U.S. Coast Guard, and other federal agencies and coordinating an IDNR position regarding impacts to Illinois’ natural resources. Such positions shall be consistent with IDNR policies, goals and objectives and be coordinated with appropriate IDNR offices.
- The ICMP has developed a networked program that will rely on the appropriate state agency to evaluate the federal action for consistency under their authoritative responsibilities. The networked state agencies responsible for administering or implementing the state policy or authority that will potentially be affected by the federal action or activity are identified in Chapter 9.

- Each of the state agencies networked with the ICMP manages its own responsibilities, issues its own permits, and administers its own federal grant programs. ICMP staff will coordinate federal consistency reviews with these state agencies to ensure that all applicable enforceable policies are considered.

Consistency Determination and Review Process for Federal Agency Activities

The federal agency proposing an activity within or outside of Illinois' coastal zone decides if the proposed activity will affect any land or water use or natural resource of the coastal zone. All "development projects" (i.e. construction) within the coastal zone are construed as activities affecting the zone. If the federal agency decides that the activity does affect Illinois' coastal zone, it prepares and submits to the ICMP a consistency determination at least 90 days before final approval of the activity. If the agency decides that the activity does not affect the zone, the agency may have to provide the state (at least 90 days prior to final approval of the activity) with a negative determination as required under 15 CFR 930.35.

A consistency determination must include a detailed description of the activity, its coastal zone effects, and comprehensive data and information sufficient to support such determination.

The ICMP coordinates the state's review of the consistency determination with the appropriate state agencies. The state has 60 days from receipt (plus appropriate extensions, if granted) to concur with or object to the federal agency's consistency determination. Agreement is presumed if the ICMP does not respond (or request an extension) within 60 days.

If the ICMP disagrees with a consistency determination, it must describe how the proposed activity will be inconsistent and should describe any alternative measures that would allow the activity to proceed. If the federal agency has failed to provide sufficient information, the ICMP must describe the nature of the information required and its necessity.

The ICMP will provide public notice according to after a consistency determination has been received, except in cases where earlier public notice on the consistency determination by the Federal agency or State agency provides public notice. Where possible, the ICMP will provide a joint public notice with the relevant federal agency. The public notice shall summarize the activity and announce the availability for public inspection of the consistency certification and accompanying public information and data. The public will be able to provide comment on whether the project is consistent with Illinois state laws.

If there is a dispute between the federal agency and the ICMP regarding the consistency determination, either party may seek the mediation services of the Secretary of Commerce or the Office of Ocean and Coastal Resource Management (OCRM).

Consistency Certification and Review Process for Federal License or Permit Actions

Applicants for federal licenses or permits must submit a consistency certification in their application to the federal agency, furnishing the ICMP a copy of such certification and data and information necessary to demonstrate consistency.

For an unlisted activity, an applicant is required to submit a consistency certification if: a) the ICMP decides that such activity will affect Illinois' coastal zone; b) the ICMP properly informs the federal agency, the applicant, and OCRM; and c) OCRM approves of the ICMP decision. The federal agency and the applicant have 15 days from receipt of the ICMP's decision to provide comments to OCRM. In the event of a dispute between a federal agency and the ICMP regarding whether a listed or unlisted federal license or permit activity is subject to consistency review, either party may seek mediation by the Secretary of Commerce.

The consistency certification consists of a statement in a letter to the ICMP that states, “The proposed activity complies with Illinois’ approved coastal management program and will be conducted in a manner consistent with such program.” The applicant must also furnish the ICMP with a sufficient project description and data described at 15 CFR 930.58 to demonstrate consistency.

Following the ICMP's receipt of the consistency certification and the required data, it will provide public notice according to IC 4-21.5 and 15 CFR 930.61. Where possible, the LMCP will provide a joint public notice with the relevant federal agency. The public notice shall summarize the activity and announce the availability for public inspection of the consistency certification and accompanying public information and data.

If the consistency review will take over three months, it must notify the applicant and the federal agency. The ICMP will concur or object to the consistency certification within six months.

If the same activity requiring a federal license or permit also requires a state permit, the issuance of a permit by the state will include and constitute a consistency decision.

The state will evaluate project consistency based on applicable state laws as described in Chapter 9 of the ICMP. Consistency will only be required on activities that are subject to state laws.

Early coordination with the ICMP is encouraged for projects affecting the Coastal Program Area.

If the ICMP concurs with the consistency certification, it will notify the federal agency and the applicant immediately. The agency is then free to either issue or deny the federal license or permit. In the latter case, the federal agency must immediately notify the state and the applicant. If the ICMP objects to the consistency certification, it must notify the applicant, the federal agency, and OCRM, and the federal agency must not issue the license or permit, unless the applicant successfully appeals to the Secretary of Commerce.

Consistency Review Process for Federal Financial Assistance

A unit of state or local government, or any related public entity, submitting an application for federal financial assistance for an activity affecting Illinois’ coastal zone must obtain the ICMP’s consistency concurrence in order to receive such assistance. The applicant should submit the application for federal assistance to the ICMP.

The ICMP will conduct the consistency review for federal financial assistance. The ICMP will decide which of the applications are for proposed activities that would affect Illinois’ coastal zone, and coordinate with the appropriate state agency for consistency review. In the event of a dispute between a federal agency and the ICMP regarding whether a federal assistance activity is subject to consistency review, either party may request mediation by the Secretary of Commerce.

The ICMP can either concur with or object to the application based on the consistency of proposed actions within the application. The ICMP will notify the applicant and the federal agency of its decision within 60 days of receipt of application for federal assistance. Objections will also be sent to OCRM. If the ICMP determines that the proposed project is consistent with state laws, the federal agency may approve or deny the request for assistance. If the federal agency denies the request, it must immediately notify the applicant and the ICMP. If the ICMP objects to the proposed project, the federal agency shall not approve assistance for the project, unless the applicant successfully appeals to the Secretary of Commerce.

Federal Actions subject to Federal Consistency

Department of Defense-Secretary of the Army and the Army Corps of Engineers – 33 USC 404-426, 33 USC 471-472, 33 USC 540-633, 33 USC 701, 16 USC 460d, 42 USC 1962d-5, 10 USC 2801, 33 USC 1251

- Constructing, maintaining and improving channels
- Dredging, storing, testing, sampling, dewatering, and disposing of dredged material
- Selection of storage, dewatering, and disposal sites for dredged material
- Building, maintaining, and repairing breakwaters, jetties, barriers, harbors, piers, docks
- Establishment of harbor lines
- Creation of permanent sand bypass systems
- Creating habitat areas, including wetlands and offshore islands, from dredged material
- Beach nourishment and replenishment activities, reinforcing dunes and beaches
- Creation of man-made dunes and other man-made land
- Building and maintaining erosion control structures
- Constructing navigational works, and marking anchorage grounds
- Constructing and maintaining flood control works, i.e., floodwalls, levees, diversion channels
- Land acquisition or disposal, including sites for disposal of dredged material
- Cleanup activities in areas contaminated with hazardous waste, radioactive waste, toxic waste, active munitions, hazardous substances or materials, or other wastes or debris

Department of Energy-Federal Energy Regulatory Commission – 42 USC 7171, 16 USC 796

- Grant of right of eminent domain for right of way for natural gas pipeline under the Natural Gas Act, 15 USC 717f (h)

Department of Homeland Security-U.S. Coast Guard – 49 USC 108, 14 USC

- Location, design, construction, alteration, abandonment, or disposition of Coast Guard stations, bases, and lighthouses
- Expansion, abandonment, designation of anchorages, lighting areas, and shipping lanes
- Oil and hazardous material pollution response planning and response activities, and Area Contingency Plans developed under Sec. 311 of the Clean Water Act, 33 USC 1321, as amended by the Oil Pollution Control Act of 1990, 33 USC 2701
- Responses to the release of hazardous substances under CERCLA, 42 USC 9601
- Designation and management of Regulated Navigation Areas and Limited Access Areas identified in 33 CFR 165
- Designation of Security and Safety Zones and other activities under the Port and Waterways Safety Act, 33 USC 1221
- Construction, operation, maintaining, improving or expanding Vessel Traffic Services under the Port and Waterways Safety Act, 33 USC 1221
- Regulating the bulk transport by vessel of hazardous material or petroleum products

Department of Interior-U.S. Fish and Wildlife Service – 16 USC 742a

- Acquisition of lands, wetlands, and other suitable habitat for migratory birds, endangered species, and other wildlife; granting rights-of-way
- Fish habitat creation, maintenance, and management
- Recovery plans under Endangered Species Act, 16 USC 1531
- Nuisance species (i.e., zebra mussel, lamprey) control measures

Department of Transportation-Maritime Administration – 49 USC 109, 40 USC 474, 46 USCS App. 861, 46 USCS App. 1101, 46 USC App. 1601

- Port planning

Environmental Protection Agency – 42 USC 6901, 42 USC 9601, 33 USC 1341, 42 USC 300h

- Activities conducted under CERCLA (Superfund), 42 USC 9601
- Activities conducted under Resource Conservation & Recovery Act, 42 USC 6901
- Open disposal of dredged material
- Oil and hazardous material pollution response planning and response activities, and Area Contingency Plans developed under the Oil Pollution Control Act, 33 USC 1321

General Services Administration – 40 USC

- Disposition and disposal of federal surplus lands and structures

Nuclear Regulatory Commission – 42 USC 2011, 42 USC 5841

- The siting, construction and operation of nuclear generating stations, power plants, fuel storage, and processing centers

List of Federal Licenses and Permits subject to Federal Consistency:

Department of Defense-Secretary of the Army, and Army Corps of Engineers

- Permits for the construction of structures (i.e., piers, wharves, breakwaters, bulkheads, jetties, weirs, transmission lines, pipes, or pipelines) in, under, or over navigable waters required by Sec. 10 of the Rivers and Harbors Act of 1899, 33 USC 403
- Permits for excavating or dredging from navigable waters, or for the alteration or modification of the course, location, condition, or capacity of such waters, required by Sec. 10 of the Rivers and Harbors Act of 1899, 33 USC 403
- Permits for disposal of dredged or fill material into navigable waters required by Sec. 10 of the Rivers and Harbors Act of 1899, 33 USC 403
- Permits for the disposal of dredged or fill material into waters of the United States required by Sec. 404 of the Clean Water Act, 33 USC 1344
- Permits for the alteration or occupation of seawall, bulkhead, jetty, dike, levee, wharf, pier, or other work built by the U.S., or of any piece of plant used in the construction of such work, or of any material composing such work, required by Sec. 14 of the Rivers and Harbors Act of 1899, 33 USC 408

Department of Energy-Federal Energy Regulatory Commission – 42 USC 7101

- Licenses, renewals, or amendments to licenses, or approvals for transfers of licenses or rights thereunder, for nonfederal hydroelectric projects and primary transmission lines under Sec. 3 (11), 4(e), 8, and 15 of the Federal Power Act (FPA), 16 USC 796 (11), 797(e), 801, and 808, and under Sec. 405 of FPA, 16 USC 2701
- Regulation of transportation of natural gas, and the entities engaged in such, under Sec. 1(b) of the Natural Gas Act (NGA), 15 USC 717(b)
- Issuing certificates of public convenience and necessity for the construction and operation of interstate natural gas pipelines and pipeline facilities, and for the transportation of natural gas, under 7(c) of the NGA, 15 USC 717f (c)

Department of Homeland Security-United States Coast Guard

- Approval of construction or modification of bridges, causeways, pipelines, or other structures over, on, or under navigable waters pursuant to Sec. 9 or 10 of the Rivers and Harbors Act, 33 USC 401, 403, and the Bridge Act, 33 USC 491
- Marine event permits issued under authority of 33 USC 1233, found at 33 CFR 100.15

Environmental Protection Agency

- National Pollutant Discharge Elimination System (NPDES) permits and other permits for federal installations discharges, sludge runoff, aquaculture permits and all other permits pursuant to Sections 401, 402, 405, and 318 of the Federal Water Pollution Control Act of 1972, 33 USC 1341, 1342, 1345, and 1328
- Permits pursuant to the Resource Conservation and Recovery Act (RCRA) of 1976, 42 USC 9601
- Permits pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980, 42 USC 6901

Nuclear Regulatory Commission

- Licensing, certification, and determination of the siting, construction, and operation of nuclear generating stations, fuel storage, and processing centers pursuant to the Atomic Energy Act of 1954, 42 USC 2011, Title II of the Energy Reorganization Act of 1974, 42 USC 5841, and the National Environmental Policy Act of 1974, 42 USC 4321

Enforceable Policies

Federal consistency provides states with an important tool to manage coastal uses and resources and to facilitate cooperation and coordination with Federal agencies. Chapters 9 and 10 identify the key management statutes, state agency authorities, and state cooperative programs to assist in the cooperation and coordination of federal actions.

Federal actions that are likely to affect any coastal use or resource must be conducted consistently to the maximum extent practicable with the ICMP enforceable policies. The following represent the categorical list of enforceable policies for federal consistency purposes:

NOTE: References to Statutes are enclosed in [brackets] and to Administrative Rules in (parenthesis).

Category 1: Public Waters, Navigation and the Public Interest

1.1 The building of any causeway, harbor, or mooring facilities for watercraft in Lake Michigan shall be confined to those areas recommended by the IDNR and authorized by the General Assembly and approved by the governor and shall be in aid of and not an interference with the public interest or navigation. Any structure, fill, or deposit erected or made in any of the public bodies of water of this state is a purpresture and may be abated as such at the expense of the person, corporation, or municipality. The terms public waters or public bodies of water mean all open public streams and lakes capable of being navigated by water craft for commercial uses and purposes, and all lakes, rivers, and streams which in their natural condition were capable of being improved and made navigable, or that are connected with or discharged their waters into navigable lakes or rivers within, or upon the borders of the state. [See *Rivers, Lakes and Streams Act*, 615 ILCS 5]

1.2 It is unlawful to make any fill or deposit of rock, earth, sand, or other material, or any refuse matter of any kind or description or build or commence the building of any wharf, pier, dolphin, boom, weir, breakwater, bulkhead, jetty, causeway, harbor, or mooring facilities for watercraft, or build or commence the building of any other structure, or do any work of any kind whatsoever in any of the public bodies of water within the state of Illinois, without first submitting the plans, profiles, and specifications therefor, and such other data and information as may be required, to the IDNR and receiving a permit therefor signed by the IDNR Director and authenticated by the seal thereof. [See *Rivers, Lakes and Streams Act*, 615 ILCS 5]

1.3 The conversion of public waters to private land by filling is prohibited. Fill material may be placed in public waters only for bank, shore or bluff protection; beach nourishment; establishing a uniform shoreline; spur dikes, wing dams, and similar structures; dams; projects of an emergency nature; or projects authorized by the General Assembly. No activity which would result in an obstruction to, or interference with, the navigability of any public body of water will be permitted. No activity which would result in bank or shoreline instability on other properties will be permitted. (See *Regulation of Public Waters*, Sections 17 IAC 3704.70 and 17 IAC 3704.90)

1.4 A city or village owning lands bordering public waters and riparian rights may grant, convey or release any of such lands or rights to any park entity for park purposes of submerged lands under the public waters adjacent to the lands controlled by such city or village; however, that no such park entity may grant, convey, lease or release any lands so acquired or the riparian rights appurtenant thereto to any private person or corporation. [See *Shore Lands for Park Use Act*, 65 ILCS 105] 10 February 2010

1.5 It is unlawful to tie up or anchor vessels or other water craft in public or navigable waters of the state in such a manner as to prevent or obstruct in any manner, between the shore lines thereof, the passage of any vessels or craft; or to voluntarily or carelessly sink, or permit or cause to be sunk, vessels or other water craft in such waters. [See *Navigable Waters Obstruction Act*, 615 ILCS 20]

Category 2: Flooding

2.1 All construction undertaken in a regulatory floodway without a permit, or contrary to a permit issued in accordance with IAC 3708P, shall be unlawful and the IDNR or any affected municipality or county will proceed to obtain injunctive relief for abatement or removal of such unlawful construction. (See *Floodway Construction in Northeastern Illinois*, 17 IAC 3708.100)

Category 3: Water Quality and Water Supply

3.1 It is state policy to restore, maintain and enhance the purity of the waters of this state in order to protect health, welfare, property, and the quality of life, and to assure that no contaminants are discharged into the waters of the state, including, but not limited to, waters to any sewage works, or into any well, or from any source within Illinois, without being given the degree of treatment or control necessary to prevent pollution, or without being made subject to such conditions as are required to achieve and maintain compliance with state and federal law. No person shall cause, threaten or allow the discharge of any contaminants into the environment in any state to cause or tend to cause water pollution in Illinois, either alone or in combination with matter from other sources, or to violate regulations or standards adopted by the Illinois Pollution Control Board. [See *Environmental Protection Act, Title III: Water Pollution*, 415 ILCS 5/9]

3.2 No permit shall be issued or renewed authorizing any fill or deposit of rock, earth, sand, or other material, or any refuse matter of any kind or description in Lake Michigan unless the IEPA makes a final

determination that the proposed dredging or deposit of material will not cause a violation of the Environmental Protection Act or IPCB regulations. [See *Rivers, Lakes and Streams Act*, 615 ILCS 5]

3.3 No regional organization, municipality, political subdivision, agency or instrumentality, or any other organization, association or individual desiring to use water from Lake Michigan, which is subject to allocation under the Level of Lake Michigan Act, shall divert or use any such water after July 1, 1977, unless it has previously obtained from the IDNR a valid allocation permit. (See *Allocation of Water from Lake Michigan*, 17 IAC 3730.301)

Category 4: Habitats, Wetlands and Wildlife

4.1 The ownership of and title to all aquatic life within the boundaries of the state, are hereby declared to be in the state, and no aquatic life shall be taken or killed, in any manner or at any time, unless the person or persons so taking or killing the aquatic life shall consent that the title to the aquatic life shall be and remain in the state for the purpose of regulating the taking, killing, possession, use, sale, and transportation of aquatic life after taking or killing, as set forth in the Fish and Aquatic Life Code. If any person causes any waste, sewage, thermal effluent, or any other pollutant to enter into, or causes or allows pollution of, any waters of this state so as to kill aquatic life, the IDNR, through the Attorney General, may bring an action against that person and recover the value of and the related costs in determining the value of the aquatic life destroyed by the waste, sewage, thermal effluent, or pollution. Illinois assents to the provisions of the Act of Congress entitled "An act to provide that the United States shall aid the States in fish restoration and management projects, and for other purposes" (Public Law 681, 81st Congress), and the IDNR is authorized, empowered, and directed to perform any acts necessary for the conduct and establishment of cooperative fish restoration projects, as defined in that Act of Congress, in compliance with that Act and its rules and regulations promulgated by the Secretary of the Interior. [See *Fish and Aquatic Life Code*, 515 ILCS 5]

4.2 State agencies shall preserve, enhance, and create wetlands where possible and avoid adverse impacts to wetlands from state and state pass-through funded activities, such as construction, land management, or technical assistance. It is the goal of the state that there be no overall net loss of the state's existing wetland acres or their functional value due to state supported activities. State agencies shall preserve, enhance, and create wetlands where necessary in order to increase the quality and quantity of the state's wetland resource base. [See *Interagency Wetlands Policy Act of 1989*, 20 ILCS 30]

4.3 It is the public policy of the state to establish a system of nature preserves, to protect, gather and disseminate information regarding them, and to provide for appropriate use of nature preserves that will not damage them, maintaining a register of natural areas and buffer areas, providing certain forms of protection and control encouraging and assisting in the preservation of natural areas and features. [See *Illinois Natural Areas Preservation Act*, 525 ILCS 30]

4.4 It is the public policy of all agencies of state and local governments to utilize their authorities in furtherance of the purposes of the Illinois Endangered Species Protection Act by evaluating through a consultation process with the IDNR whether actions authorized, funded, or carried out by them are likely to jeopardize the continued existence of Illinois listed endangered and threatened species or are likely to result in the destruction or adverse modification of the designated essential habitat of such species. [See *Illinois Endangered Species Protection Act*, 520 ILCS 10]

4.5 Acquisition of natural areas, wetlands, forests, prairies, open spaces, and greenways provide critical habitat for fish and wildlife and are in need of protection. Acquiring such lands for the conservation of natural resources and public recreation promote the public health, prosperity, and general welfare and are proper responsibilities of state government in need of protection by the government and

non-profit organizations for conservation and recreational purposes in order to prevent the disappearance of such crucial lands. [See *Illinois Natural Heritage Fund Act*, 30 ILCS 150]

4.6 Natural heritage lands are “lands and waters dedicated as Nature Preserves in accordance with the Illinois Natural Areas Preservation Act and other lands and waters representing outstanding examples of native ecological communities or providing habitat for endangered or threatened species and so categorized by the IDNR in the Illinois Natural Areas Inventory or the Illinois Natural Heritage Database maintained by the IDNR.” The Natural Heritage Fund is to be used exclusively by the IDNR for the preservation and maintenance of natural heritage lands held in the public trust. [See *Fish and Aquatic Life Code*, 515 ILCS 5]

Category 5: Historic, Archaeological and Cultural Resources

5.1 The Illinois Historic Preservation Agency (IHPA) maintains an Illinois Register of Historic Places. Historic places are designated by the IHPA Director upon the recommendation of the Illinois Historic Sites Advisory Council, which has the power to advise the IHPA on matters pertaining to historic preservation. It is unlawful to “demolish, cause to be demolished, or permit or order the demolition of any Critical Historic Feature of a Registered Illinois Historic Place unless the Director has issued a Certificate of Compliance for the proposed action.” Critical historic features are “those physical and environmental components which taken singly or together make a place eligible for designation as a Registered Illinois Historic Place.” State agencies must not expend public funds on projects which will have an adverse economic or environmental impact on a registered historic place unless the Director of the IHPA determines that the project is necessary to provide an important public service or benefit, the project cannot be carried out practically so as to avoid the adverse effect and the adverse effect is minimized to the maximum extent feasible.” [See *Illinois Historic Preservation Act*, 20 ILCS 3410]

5.2 The state has “the exclusive right and privilege of regulating, exploring, excavating or surveying, through the IHPA, all archaeological and paleontological resources found upon or within any public lands.” Archaeological resources include “any significant material remains or localities of past human life or activities on public land, including but not limited to artifacts, historic and prehistoric human skeletal remains, mounds, earthworks, shipwrecks, forts, village sites or mines.” The exploration, excavation, or collection of an archaeological or paleontological resource without a permit from the IHPA is prohibited. [See *Archaeological and Paleontological Resources Protection Act*, 20 ILCS 3435]

Category 6: Recreation and Public Access

There are no ICMP enforceable policies in this category for federal consistency purposes.

Category 7: Economic Development

There are no ICMP enforceable policies in this category for federal consistency purposes.

Category 8: Energy Facilities and Air Quality

8.1 A “Certificate of Public Convenience and Necessity” (CPCN) is required for projects owned by a regulated facility, and requires information on cost and need for the project prior to construction. The Illinois Commerce Commission has the authority for granting the CPCN for the construction of a new electric generating facility, and reevaluates the propriety and necessity for the certificate at least every 3 years. [See *Public Utilities Act*, 220 ILCS 5]

8.2 It is state policy to restore, maintain, and enhance the purity of the air of this state in order to protect health, welfare, property, and the quality of life and to assure that no air contaminants are discharged into the atmosphere without being given the degree of treatment or control necessary to

prevent pollution. No person shall cause or threaten or allow the discharge or emission of any contaminant into the environment in any State to cause or tend to cause air pollution in Illinois, either alone or in combination with contaminants from other sources, or so as to violate regulations or standards adopted by the Illinois Pollution Control Board. [See *Environmental Protection Act, Title II: Air Pollution*, 415 ILCS 5/9]

8.3 The IEPA shall not issue any permit to develop, construct, or operate, within one mile of any portion of Lake Michigan that has been designated an Area of Concern (Waukegan Harbor has been designated an Area of Concern) under the Great Lakes Water Quality Agreement, any site or facility for the thermal treatment of sludge, unless the applicant submits to the IEPA proof that the site or facility has received local siting approval from the governing body of the municipality in which the site or facility is proposed to be located (or from the county board if located in an unincorporated area), in accordance with Section 39.2 of this Act. [See *Environmental Protection Act, Title 2: Air Pollution*, 415 ILCS 5/9.11]